



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Authorize City Manager to Enter Into an Amended Professional Services Agreement with Lodi Shelter PALS

MEETING DATE: October 6, 2010

PREPARED BY: Interim Chief of Police

RECOMMENDED ACTION: Authorize the City Manager to enter into an amended professional services agreement with Lodi Shelter PALS.

BACKGROUND INFORMATION: The City of Lodi entered into a contract with Lodi Shelter PALS in August 2009 to manage the Animal Shelter. The result is the Animal Shelter is operating more effectively. This is shown by increases in pet adoptions (up 50 percent) and licensing (revenue up \$10,000), the Shelter's increased availability to the public, and the ability of Animal Control officers to spend more time responding to citizen calls. In addition, Shelter record-keeping is up-to-date, accurate and published on the website.

These improvements are due to the dedication of the Shelter staff and the flourishing relationship with Lodi Shelter PALS, a group that is passionate about its tasks and an excellent partner for the City. The year also has revealed that changes are needed to the Professional Services Agreement between Lodi Shelter PALS and the City. Key changes in the proposed agreement are as follows:

- Lodi Shelter PALS will keep all gross proceeds it collects on the City's behalf, with the City guaranteeing a minimum of \$50,000. This amendment adds three categories of fees to PALS revenue: redemption, relinquish and boarding fees. Lodi Shelter PALS collected \$48,290 from fees in the past year, resulting in an additional \$1,710 payment from the City.
- The agreement is for successive one-year terms that may be terminated by either party by giving three months' notice.
- Lodi Shelter PALS' agrees to employ support staff (in addition to an office manager) to assist with data collection and reporting, and training volunteers.
- The City will pay the costs associated with licensing: renewal reminders, issuance and maintaining the database.
- Adds language clarifying that Shelter animals will be sent for veterinary care, spaying/neutering, with Shelter staff authorization.

FISCAL IMPACT: The terms are expected to provide Lodi Shelter PALS the incentive to reach \$50,000 in revenue to fully reimburse the City.

A handwritten signature in black ink, appearing to read "Gary Benincasa".

Gary Benincasa
Interim Chief of Police

Cc: City Attorney

APPROVED:

A handwritten signature in black ink, appearing to read "Konradt Bartlam".

Konradt Bartlam, City Manager

**FIRST AMENDED
PROFESSIONAL SERVICES AGREEMENT
FOR ANIMAL SHELTER SERVICES**

THIS FIRST AMENDED AGREEMENT is made and entered into this _____ day of ~~August 5, 2009~~ September, 2010 ("Effective Date"), by and between the CITY OF LODI, a municipal corporation ("CITY"), and LODI SHELTER PALS, a non-profit corporation ("LSP").

W I T N E S S E T H:

- A. WHEREAS, CITY proposes to have LSP provide animal shelter office management services as described in the Scope of Services; and
- B. WHEREAS, LSP, by virtue of the fact that its directors are also the directors and officers of People Assisting Lodi Shelter, another nonprofit corporation ("PALS"), represents that it has specialized expertise to perform the services herein contemplated; and
- C. WHEREAS, CITY and LSP desire to contract for the specific services described below (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and
- D. WHEREAS, no official or employee of CITY has a financial interest, within the provisions of California Government Code Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY LSP

1.1. Scope of Services. LSP shall provide the professional services described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference. City shall provide LSP with sufficient and existing space in the CITY'S office facilities to perform such services.

1.2. Professional Practices. All professional services to be provided by LSP pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professionals in similar fields and circumstances in accordance with sound professional practices. LSP shall advise CITY of any changes in any laws that may affect - LSP's performance of this Agreement.

1.3. Warranty. LSP warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages;

occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. LSP shall indemnify and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against CITY for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of LSP's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, LSP shall not engage in, nor permit its agents to engage in, discrimination in employment of persons, or provision of services to persons, because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of CITY. LSP may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at LSP's sole cost and expense.

1.6. Fingerprint Check. All LSP employees and volunteers performing services under this Agreement shall pass a City fingerprint check. City shall, in the exercise of its reasonable discretion, have authority to approve or disapprove of all onsite employees and volunteers.

2.0. COMPENSATION AND BILLING

2.1. Compensation. LSP shall be paid the entire gross proceeds from ~~its collection of animal licenses, adoption fees and unaltered animal fees~~ Revenue accounts 1001-5935 (Adoption Fees, Unaltered Fees, Redemption Fees, Relinquish Fees and Boarding Fees) and 1001-5113 (Animal License Fees), for its services under this Agreement. In no event will that amount be less than \$50,000.00 per year paid in equal monthly installments of \$4,175.00. Collections in excess of \$50,000 ("Overcollection Payment") will be paid in six month increments with collections over \$25,000.00 for each six month period paid by CITY to LSP within thirty (30) days after each such six (6) month period. If, at the end of the fiscal year, total collections do not support the first 6 months Overcollection Payment, the excess will be deducted from LSP's upcoming monthly payments or, if none are pending, refunded to City.

2.2. Additional Services. LSP shall not receive compensation for any services provided outside the scope of services specified in the Scope of Services unless CITY, prior to LSP performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of LSP's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to CITY for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date of this Agreement.

3.0 TIME OF PERFORMANCE

3.1 Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within thirty (30) days from the Effective Date of this Agreement. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2 Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0 TERM AND TERMINATION

4.1 Term. This Agreement shall commence on the Effective Date and continue for a period of one (1) year, ending on August 5, 2010. ~~At either party's option, exercised in writing, this Agreement shall be renewable for two (2) successive one (1) year periods unless terminated as provided herein or as otherwise agreed to in writing by the parties, for successive one year terms unless either party serves a written notice of termination three months prior to the then current years expiration.~~

4.2 Notice of Termination.

(a) Either party may terminate this agreement upon 30 days written notice.

4.3 Compensation. In the event of termination as set forth in 4.2, CITY shall pay LSP for reasonable costs incurred and professional services satisfactorily performed up to and including the date of the written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein.

4.4 Documents. In the event of termination of this Agreement, all documents prepared by LSP in its performance of this Agreement shall be delivered to the CITY within ten (10) days of delivery of termination notice, at no cost to CITY. Any use of uncompleted documents without specific written authorization from LSP shall be at CITY's sole risk and without liability or legal expense to LSP.

5.0 INSURANCE

5.1. Minimum Scope and Limits of Insurance. LSP shall obtain and maintain

during the life of this Agreement all of the following insurance coverages:

(a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

(b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.

(c) Workers' compensation insurance as required by the State of California.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

(a) Additional insureds: "The City of Lodi and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with the City of Lodi."

(b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to CITY."

(c) Other insurance: "Any other insurance maintained by the City of Lodi shall be excess and not contributing with the insurance provided by this policy."

5.3. Certificates of Insurance. LSP shall provide to CITY certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by CITY, prior to performing any services under this Agreement.

5.4. Non-limiting. Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which LSP may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Aareement. This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. CITY's Police Chief or his/her designee shall be the representative of CITY for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the CITY, called for by this Agreement, except as otherwise expressly provided in this Agreement.

LSP shall designate a representative for purposes of this Agreement who shall

be authorized to issue all consents, approvals, directives and agreements on behalf of LSP called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Additional Representatives. CITY shall designate an employee of CITY acceptable to LSP to work directly with LSP in the performance of this Agreement.

LSP shall designate a representative who shall represent it and be its agent in all consultations with CITY during the term of this Agreement. LSP or its representative shall attend and assist in all coordination meetings called by CITY.

6.4. Notices. Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

If to LSP: Lodi Shelter Pals
2414 W. Kettleman Lane, Suite 210-2207
Lodi, California
Attention: Nancy Alumbaugh

If to CITY: ~~Blair King~~ Konradt Bartlam,
Interim City Manager
City of Lodi
221 West Pine Street
Lodi, CA 95240

With copies to: D. Stephen Schwabauer, City Attorney
City of Lodi
221 West Pine Street
Lodi, CA 95240

~~David Main~~ Gary Benincasa
Interim Chief of Police
221 West Pine Street
Lodi, CA 95240

6.5. Drug-free Workplace Policy. LSP shall provide a drug-free workplace by complying with all provisions set forth in CITY's policy, attached hereto as Exhibit "B" and incorporated herein by reference. LSP's failure to conform to the requirements set forth in CITY's policy shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by CITY.

6.6. Attorneys' Fees. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the

opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

6.7. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in San Joaquin County, California.

6.8. Assignment. LSP shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of LSP's interest in this Agreement without CITY's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of CITY's consent, no subletting or assignment shall release LSP of LSP's obligation to perform all other obligations to be performed by LSP hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless. LSP shall protect, defend, indemnify and hold harmless CITY and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of LSP, its employees, agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor. LSP is and shall be acting at all times as an independent contractor and not as an employee of CITY. LSP shall secure, at its expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for LSP and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11. Ownership of Documents. All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by LSP or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of CITY. LSP agrees that any such documents or information shall not be made available to any individual or organization without the prior written consent of CITY. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of CITY and without liability or legal exposure to LSP. CITY shall indemnify and hold harmless LSP from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from CITY's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by LSP. LSP shall deliver to CITY any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files, audio tapes or any other Project related items as requested by CITY or its authorized representative, at no additional cost to the CITY.

6.12. Public Records Act Disclosure. LSP has been advised and is aware that all reports, documents, information and data including, but not limited to, computer

tapes, discs or files furnished or prepared by LSP, or any of its subcontractors, and provided to CITY may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250, *et. seq.*).

6.13. Prohibited Employment. LSP will not employ any regular employee of CITY while this Agreement is in effect.

6.14. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail.

6.15. Costs. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.16. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of CITY and LSP and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.17. Headings. Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.18. Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.19. Amendments. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.20. Waiver. The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.21. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.23. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF LODI, a municipal corporation

LSP, a California non-profit corporation

KONRADT BARTLAM, City Manager

NANCY ALUMBAUGH
CEO/Treasurer

ATTEST:

RANDI JOHL, City Clerk

Approved as form:


D. STEPHEN SCHWABAUER
City Attorney, City of Lodi 

EXHIBIT A

SCOPE OF SERVICES

LSP DUTIES AND RESPONSIBILITIES:

1. CITY contracts with LSP to perform all adoption, fostering and other placement of all domestic animals that come within the possession of the Animal Services Division of the Police Department.
2. CITY contracts with LSP to process and maintain records of all donations documented on CITY receipts to and for the benefit of Shelter animals.
3. LSP will employ an Office Manager and support staff to oversee and maintain office systems that collect and generate animal data, including the inventory of animal population. LSP's Office Manager will supervise and train office volunteers in data entry, adoption paperwork and telephone answering protocol.
4. LSP will staff the Animal Shelter office from 9:00 am to 5:00 pm Monday through Friday and 11:00 am to 4:00 pm Saturday, noon hour lunch and CITY closures excepted.
5. LSP will issue licenses for Shelter adoptions and walk-ins and collect licensing fees at the rate set by CITY Council.
6. LSP will issue license renewal reminders, collect license fees, issue licenses and maintain a license database at CITY's expense. ~~The issuance of the renewal reminders and maintenance of the database will be phased in over the first three (3) months of this Agreement.~~
7. LSP will ensure that each animal admitted to the Shelter is administered a behavior assessment test. LSP will not place for adoption animals which may not meet acceptable scoring criteria. LSP will issue and maintain records verifying the issuance of behavioral assessment warning and liability waivers on forms provided by CITY, for animals scoring below the thresholds set by the Police Chief. LSP may notify PALS (People Assisting Lodi Shelter) of any animals that may require rehabilitation to meet such thresholds.
8. LSP will issue spay/neuter vouchers to the public (as funds are available), track the individual vouchers and account to CITY for the value of outstanding vouchers.
9. LSP will coordinate with Shelter staff and PALS for transport of Shelter animals for veterinarian care and spaying/neutering. Shelter Staff will authorize

| all shelter animals to be sent for veterinary care and spaying neutering.

10. LSP will show animals during posted adoption hours. LSP will prepare adoption paperwork.

11. CITY may at its option commission its independent accounting firm to conduct an annual audit of LSP at CITY expense. LSP shall make all records necessary for the audit to the auditor and make its staff available for interview within 5 business days of the auditor's request.

12. LSP will process all paperwork involving expenditures out of the CITY 2302 (spay/neuter prior to adoption) account and the CITY 2303 (veterinary services/spay/neuter at adoption) account and for the CDBG/HUD fund reimbursement account for approval by the Police Chiefs designee. Disputes regarding approval between the designee and LSP will be resolved by the Lieutenant in charge of animal services.

13. LSP will provide a fidelity bond to CITY in the amount of \$50,000.

LSP services shall not include:

1. Enforcement of local and state laws pertaining to domestic animals.
2. Response to emergency calls.
3. Stray pick up.
4. Euthanasia of Shelter animals.
5. Quarantine of animals.
6. Intake at Shelter to include vaccinations and medical evaluations, ~~treatment, and logging of same.~~
7. Cleaning of Shelter kennels/cages and provision of food, litter and supplies for Shelter.
8. Payment of electricity, water, natural gas, telephone and trash removal.
9. Maintenance of the facility (to include repair of shelter office flooring), landscaping and Shelter area accessibility.
10. Shelter office equipment and supplies (computers, printers, faxes, paper toner, ink cartridges, and miscellaneous office supplies).
11. Maintenance of fire safety equipment.
12. Transport of large animals for veterinary services.